

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:23cv0108 (LMB/JFA)
)	
GOOGLE LLC,)	
)	
Defendant.)	
)	

ORDER

This matter is before the court on plaintiffs’ motion to seal certain portions of their reply in support of their motion to exclude testimony of Anthony Ferrante along with exhibit D and a portion of exhibit E to the reply. (Docket no. 698). In the memorandum in support of the motion to seal, plaintiffs state that they redacted portions of the reply and exhibit E and filed under seal exhibit D based on defendant designating that information as confidential. (Docket no. 699). On June 14, 2024, defendant filed a response to this motion stating that it had no objection to the unsealing of exhibit D (expert report of Anthony J. Ferrante dated January 23, 2024). (Docket no. 841 at 10). While defendant’s response does not address the redactions in the reply directly, the redactions on pages 3, 8, 13, 15, and 16 all relate to information contained in exhibits B and D to the reply. The court has previously ordered exhibit B to be unsealed and exhibit D is being unsealed pursuant to this order. Accordingly, there is no basis for having the information in the reply remain under seal. However, defendant requests that a single portion of exhibit E (selected pages from the rebuttal expert report of Dr. Wenke Lee) remain under seal. (Docket no. 841-1 at 23). It appears that none of the numerous third parties have raised any specific concerns about the information contained in this filing being in the public record.

Initially, the court finds that the materials filed relating to this motion require an analysis of the public's access under the First Amendment standard requiring that access may be restricted only if it is necessitated by a compelling government interest and the denial of access is narrowly tailored to serve that interest. *See Va. Dep't of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004); *Doe v. Pub. Citizen*, 749 F.3d 246, 266 (4th Cir. 2014). Having reviewed the submissions of the parties and considering the Fourth Circuit's directives, the court finds

1. That the motion to seal the reply in support of the motion to exclude testimony of Anthony Ferrante is denied.
2. The motion to seal exhibit D is denied.
3. The motion to seal exhibit E is granted in part and denied in part. Defendant's response requests that only a portion of footnote 47 on page 22 of the rebuttal expert report of Wenke Lee remain under seal. Defendant argues that information should remain under seal "because it contains details regarding Google's non-public, proprietary security process." (Docket no. 841-1 at 23). While it is unclear if the information in this footnote remains sensitive given the time period indicated, the court will allow this information to remain under seal at this time.¹ This portion of exhibit E was not cited by plaintiffs in their reply or referred to in their reply.

In accordance with this Order, within seven days plaintiffs shall file in the public record an unredacted version of the reply in support of the motion to exclude testimony of Anthony

¹ This ruling is subject to reconsideration by the District Judge if this document is intended to be used during the trial of this case. As set forth in the court's June 24, 2024 Order (Docket no. 871), a hearing may be held before the District Judge on August 9, to address any objections to the public use of confidential documents or testimony designations during trial.

Ferrante along with exhibit D. Plaintiffs shall also file in the public record a version of exhibit E in which only the portion of footnote 47 on page 22 of the rebuttal expert report of Wenke Lee as requested by defendant is redacted.

Entered this 9th day of July, 2024.

Alexandria, Virginia


_____/s/_____
John F. Anderson
~~United States Magistrate Judge~~
John F. Anderson
United States Magistrate Judge